Ellenoff Grossman & Schole LLP

Client Memorandum

March 18, 2020

SEC REGULATION BEST INTEREST: PART II

IF THESE RULES AFFECT YOU, IT'S TIME TO ACT!

Effective Date June 30, 2020

If you are a broker-dealer or registered investment adviser covered by SEC Regulation Best Interest and you have not yet begun your compliance effort: what are you waiting for? Time is running out. If you have begun, please be cognizant of these recent developments.

Background

Take Action Now!

Last December we published a Client Memorandum[1] cautioning that the June 30, 2020 compliance date for ***SEC Regulation Best Interest,*** SEC Rule 15*l*-1 ("Regulation BI" or the "Rule"), was fast approaching, and emphasizing that small or specialized broker-dealers or registered investment advisers could easily misunderstand the breadth of Regulation BI and assume they were not covered. We urged private placement, "institutional," and "high net worth" broker-dealers and advisers to individual investors, and certain family offices, to review carefully to determine if they are subject to Regulation BI's extensive compliance requirements. As most readers of this Memorandum are acutely aware, SEC Regulation BI increases the obligations owed by broker-dealers and registered investment advisers recommending a transaction or strategy to "natural person" retail clients to substantially more than the traditional broker-dealer "suitability" duty as follows:

> A broker, dealer, or a natural person who is an associated person of a broker or dealer, *when making a recommendation* of any securities transaction or investment strategy involving securities (including account recommendations) to a *retail customer*, shall act in the *best interest of the retail customer* at the time the recommendation is made, without placing the financial or other interest of the broker, dealer, or natural person who is an associated person of a broker or dealer making the recommendation ahead of the interest of the retail customer (*italics added*).[2]

The Rule imposes four core obligations on covered broker-dealers and registered advisers in addition to a new *mandatory* disclosure Form CRS that must be prepared, filed with the SEC and delivered to existing clients by June 30, 2020. By then, "covered firms" must also determine how to meet the Rule's enhanced *duty of care and conflict of interest* provisions (elimination or disclosure and mitigation of conflicts); and put in place supervisory *compliance* procedures, monitoring and training reasonably designed to achieve compliance with the Rule.[3]

There is now less than four months until Regulation BI's June 30, 2020 compliance date. If you have not yet or have just begun your Regulation BI compliance project, time is running out. Even if you are well along you should take the time to focus on the following recent developments.

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[1] EGS Client Memorandum (Dec. 9 2019), cited as "EGS Memo" and available at: http://www.egsllp.com/wp-content/uploads/2019/12/00750617.pdf

[2] SEC Rule 15*l*-1 (a) (1), 17 CFR 240.15l-1(a) (1).

[3] SEC Rule 15*l*-1(a) (2) (i)–(iv).

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Will SEC Regulation Best Interest Be Postponed?

Do not count on it! The SEC provided a one year compliance period as part of the Rule's June 2019 adoption;[4] and has shown no inclination to postpone the June 30, 2020 compliance date. While two different groups did sue the SEC in September, 2019, no judicial stays or injunctions were granted to prevent the rule going into effect. Moreover, although petitions for review of Regulation BI were filed by those same two plaintiff groups in the United States Court of Second Circuit, those petitions are still pending with briefing continuing as of the date of this Memorandum, and no stay entered.[5] Issuance of a Second Circuit decision by June 2020 seems unlikely, especially given the size of the SEC's rulemaking record under review and the complexity of the issues raised.[6] Both the SEC and FINRA last year examined the "preparedness" of firms toward Regulation BI compliance this year[7] and both have identified Regulation BI as a key 2020 examination priority.[8] In January and February the SEC published additional "Frequently Asked Questions" on both Regulation BI [9] and Form CRS. [10]

Last week, FINRA posted a rule proposal to be filed with the SEC that will conform both its "suitability" Rule 2111 and its rules about non-cash compensation (sales contests) to Regulation BI, effective on the compliance date of Regulation BI.[11] The change to Rule 2111 will eliminate coverage of "natural persons" covered by Regulation BI but preserves Rule 2111 coverage of "entities and institutions (*e.g.*, pension

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[4] *See* 84 Fed. Reg. 33318 (July 12, 2019).

[5] A consolidated federal court action to enjoin (and to invalidate) the Rule by seven states and the District of Columbia was dismissed in September, 2019 in favor of parallel petitions for review of the rulemaking in the United States Court of Appeals for the Second Circuit, Docket No. 19-2886 (2d Cir.). *See* Decision and Order, *State of New York, et al., v. United States Securities and Exchange Commission, et al,* No. 1:19-cv-08365-VM, Docket No. 27 (S.D.N.Y. Sept. 27, 2019). A financial planners group also filed a separate action that was consolidated with the states' action, Consolidation Order, Id., Docket No. 13 (S.D.N.Y. Sept. 12, 2019), and is part of the pending Second Circuit proceeding.

[6] The appeals have also generated a certain amount of press attention, such as when the lead sponsors of Dodd-Frank filed amicus curiae briefs in January 2020 stating the rule was not what was intended by Congress (*i.e.,* them) and should be invalidated. *See Dodd Frank Authors Say Reg. BI Should be Halted by Appeals Court,* Plan Advisor (January 8, 2020), https://www.planadviser.com/dodd-frank-authors-say-reg-bi-halted-appeals-court/

[7] *See FINRA Reveals Reg BI 'Preparedness Reviews' Starting in November,* Financial Advisor.com (Oct. 23, 2019). FINRA also posted a Regulation BI compliance checklist last Fall. https://www.finra.org/sites/default/files/2019-10/reg-bi-checklist

[8] *See* SEC Office of Compliance and Inspections ("OCIE"), *2020 Examination Priorities*, at 4, https://www.sec.gov/about/offices/ocie/national-examination-program-priorities-2020.pdf; *FINRA Risk Monitoring and Examination Priorities Letter* (Jan. 8, 2020), at 2, https://www.finra.org/rules-guidance/communications-firms/2020-risk-monitoring-and-examination-priorities-letter

[9] https://www.sec.gov/tm/faq-regulation-best-interest.

[10] https://www.sec.gov/investment/form-crs-faq.

[11] Proposed SR-2020-007 (March 12, 2020), https://www.finra.org/sites/default/files/2020-03/SR-FINRA-2020-007.pdf

funds), and natural persons who will not use recommendations primarily for personal, family, or household purposes (*e.g.,* small business owners and charitable trusts)".[12]

What about the States?

Applying a *fiduciary duty* standard like that required of investment advisers to broker-dealers is a hot topic among state securities regulators. As of late last year at least three states - Massachusetts, New Jersey and Nevada - had proposed rules mandating such a fiduciary duty standard but none of these states had promulgated a final rule. Maryland has also since proposed a rule; and expect other states to follow.

Massachusetts

Not surprisingly, Massachusetts was the first state to promulgate a final fiduciary duty rule, announcing its rule on February 21, 2020, which became effective March 6, 2020, and is to be enforced beginning September 1, 2020, [13] characterized by Massachusetts Commonwealth Secretary William F. Galvin as "a true fiduciary conduct standard".[14] The Massachusetts fiduciary rule is in addition to its suitability rule.

The final Massachusetts rule was pared down from the proposed rule filed on December 23, 2019, but still has a substantial bite. As revised, the final rule applies *only* to broker-dealers and their representatives *and only* to investments in securities, *not* to investment advisers, or to commodities or to insurance products like variable annuities, as originally proposed.[15] It covers three specific scenarios, when a broker-dealer or its representative: i) makes a recommendation for a securities transaction or securities investment strategy (including opening or transferring an account or assets, or exchanging assets); ii) the firm and the customer agree to additional obligations, such as investment discretion; or iii) if the broker has agreed to regular or periodic account monitoring (and then only during the period agreed to).[16] Unlike SEC Regulation BI, the applicable Massachusetts definitions of "customer" exclude certain "institutional" customers, such as registered or otherwise regulated entities like banks, RIAs, mutual funds, and fiduciaries of employee benefit plans, plus certain other types of institutional customers like Qualified Institutional Buyers (QIBs), corporations not formed solely to invest in securities having more than $5 million in assets; and non-profits with a securities portfolio over $25 million.[17] However, most categories of "Accredited Investors" and discretionary accounts will be subject to the Massachusetts rule.

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[12] Id. at 8.

[13] The Massachusetts proposed rule, final rule and adopting release may be found here: https://www.sec.state.ma.us/sct/sctfiduciaryconductstandard/fiduciaryrule-adoption.htm. Notably, Massachusetts followed an expedited schedule: it proposed a rule on December 23, 2019 with a comment period and public hearing January 7, 2020 and a final rule February 21, 2020.

[14] *Massachusetts Finalizes Fiduciary Rule, ThinkAdvisor.com, Feb 21, 2020,* https://www.thinkadvisor.com/2020/02/21/fiduciary-rule-is-final-in-massachusetts/

[15] *See* note 9.

[16] 950 **Mass. Code of Regulations**, section 12.207 (1) (a) (hereinafter "Mass. Reg. sec._").

[17] Id. sec. 12-207(3)(a)-(d), (4)

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The Massachusetts fiduciary duty rule has two core components: a *duty of care* and a *duty of loyalty*; both duties appear to conflict with the comparable provisions of SEC Regulation BI, in that each essentially requires a broker-dealer to act as a fiduciary in the customer's sole interest in making a recommendation or in undertaking another covered obligation. [18] For example, the duty of loyalty requires the broker-dealer: a) to disclose all material conflicts of interest and either avoid or eliminate these conflicts entirely, with a limited exception allowing mitigation of conflicts that cannot be reasonably avoided (appropriately documented); and b) to make recommendations or give advice without regard to "the financial or any other interest of any party other than the customer." [19] Starkly different from SEC Regulation BI, disclosure of material conflicts alone explicitly will not satisfy the Massachusetts rule.[20] Also stricter than SEC Regulation BI, the Massachusetts rule makes *all* sales contests, express or implied sales quotas or awarding special incentive compensation for meeting sales goals for recommending opening or transferring assets to an account, an investment strategy or specific recommendation of an investment, presumptive violations of the duty of loyalty owed a customer.[21]

As of the date of this Memorandum, there is no lawsuit challenging the Massachusetts rule. It is not surprising that Massachusetts was the first state to act, given its history of active local securities regulation and aggressive enforcement. Broker-dealers doing business in Massachusetts must comply with both the federal and state standards. All intermediaries need to be alert for other states adopting their own rules at variance with SEC Regulation BI.

The SEC's Frequently Asked Questions

The SEC staff issued *Frequently Asked Questions* (FAQ) in both January and February 2020 adding considerable substance to earlier 2019 guidance and separately addressing questions that have been raised about Regulation BI [22] and Form CRS. [23]

[18] Id. sec. 12-207(2) (a) & (b).
[19] Id. sec. 12-207(2) (b).
[20] Id. sec. 12-207(2) (c).
[21] Id. sec. 12-207(2) (d).
[22] These can be found at: https://www.sec.gov/tm/faq-regulation-best-interest, and will be cited as "Regulation BI FAQ". (The FAQ are unnumbered).
[23] Found at: https://www.sec.gov/investment/form-crs-faq, cited as "Form CRS FAQ".

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SEC Regulation BI FAQ

Retail Customer[24]

Customers of Special Purpose Broker-Dealers

Under this heading in the Regulation BI FAQs,[25] the SEC confirms that "special purpose broker dealers" are covered by Regulation BI if they deal with "natural persons." Addressing the example of private placement broker-dealers who make recommendations only to accredited investors, the FAQ emphasizes the test is simply if the broker-dealer makes recommendations to a covered "retail customer," *i.e.*, a "natural person," or to such a natural person's legal representative. To dispel any residual doubt, the FAQ categorically states Regulation BI's "retail customer" definition "*does not exclude* high-net worth natural person investors and natural persons that are accredited investors".[26] [emphasis added]

Legal Representative of Natural Persons

Both the Regulation BI FAQs and the Form CRS FAQs[27] discuss the somewhat confusing usage of the term "legal representative" of a "natural person." Each FAQ emphasizes that such a "legal representative" is a non-professional natural person acting for a "natural person." The only individuals who are *not* such representatives are "regulated financial service professionals" like broker-dealers, registered investment advisers, corporate fiduciaries and trust companies, and their regulated employees.[28] Former representatives lose their exempt status once they are no longer regulated. The only other categorical exception is for workplace retirement plans and their representatives. Moreover, "natural persons" or their non-professional representatives relying on a regulated professional *cannot waive* Regulation BI's application to a regulated financial service professional's actions, for example, by stating they are not relying *solely* upon that professional's recommendations.[29]

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[24] For easy reference, Regulation BI, SEC Rule 15*l*-1 (a) (1) provides:

> *Retail Customer* means *a natural person*, or the *legal representative* of such Natural person, who: (A) *Receives* a *recommendation* of any securities transaction or investment strategy involving securities from a broker, dealer, or a natural person who is an associated person of a broker or dealer; and (B) Uses the *recommendation* primarily for personal, family, or household purposes. [*Italics added*].

[25] Regulation BI FAQ, *Retail Customer*, 2d FAQ.
[26] Regulation BI FAQ, *Retail Customer*, 2d FAQ.
[27] Regulation BI FAQ, *Retail Customer*, 3d FAQ; Form CRS FAQ, *Retail Investor*, 1st FAQ.
[28] E.g., Regulation BI FAQ, *Retail Customer*, 3d FAQ.
[29] Regulation BI FAQ, *Retail Customer*, 4th FAQ.

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Prospective Customers: "Use" of a Recommendation

An important trigger in the Regulation BI "retail customer" definition[30] is "use" of a recommendation by a natural person. In another Regulation BI FAQ, the SEC cautions that firms must be especially careful where information is provided to a prospective customer "but not yet used" in deciding when a covered recommendation is made to trigger Regulation BI's disclosure and other obligations.[31] As a best practice, we suggest that at a minimum firms consider providing Form CRS to prospects during or immediately after the first substantive contact with them that could even remotely be seen as containing or making a "recommendation,"[32] and not wait for first use of the recommendation, *i.e.,* opening or transferring an account.

Recommendation

Account Types Covered

The types of account recommendations covered by Regulation BI are discussed in several Regulation BI FAQs. The key to understanding the breadth of covered account types is the SEC staff's statement: "The type of securities account recommended is an investment strategy that has the potential to greatly affect retail customers' costs and investment returns." [33] This is based on the assumption account recommendations "will almost always involve a 'securities transaction'…" and seen in that light, the SEC "staff reminds broker-dealers that the term 'investment strategy' (which includes account recommendations) is to be interpreted broadly." [34]

As a result, a wide range of types of brokerage accounts is covered including retirement accounts (IRAs, SEPs) and education accounts (529 Plans); brokerage accounts with different privileges like cash, margin, or options accounts are covered; as are different levels of service within accounts (*e.g.,* on-line trading, product and service breakpoints).[35] This also extends to recommending a self-directed account even though no subsequent investment recommendations will be provided.[36] For dual-broker-dealer/ investment adviser representatives it almost goes without saying that the range of accounts available from each need to be discussed, with the caveat that if a given individual is only registered with one type of entity of a dual registrant (say a broker-dealer) only that entity's products and services need to be covered.[37]

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[30] *See* footnote 24.
[31] Regulation BI FAQ, *Retail Customer*, 1st FAQ.
[32] Consistent with the discussion below this would mean that anything more than an introduction and statement like "call me" and/or an educational communication would trigger Form CRS delivery.
[33] Regulation BI FAQ, *Recommendation*, 1st FAQ.
[34] Id.
[35] Id.
[36] Id.
[37] Regulation BI FAQ, *Recommendation*, 2d FAQ.

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Communications Constituting Recommendations

Within the framework of a communication in an informal setting like a social event or sports outing, or a "hire me" conversation, a somewhat lengthy Regulation BI FAQ posted in January[38] and a related Form CRS FAQ[39] make the point that it is not the location or setting of a communication that is determinative but the content of the communication in its overall context. In the Regulation BI FAQs the SEC staff elaborates on this to some extent in stating that the more individually tailored to a specific prospective customer or targeted group a communication is the more likely a recommendation will exist. [40] The same FAQ also provides an example clarifying that contact like stating "give me a call …so we can discuss" [41] is *not* a recommendation, using the example of meeting a friend of a customer at a dinner party, handing the friend a business card and asking the person to call to find out more about services offered and how the representative could help to meet the individual's goals.[42] An additional example given is an educational communication about IRA accounts, providing that for example, communicating IRS contribution limits or minimum distribution amounts, will not be considered a "recommendation" absent a recommendation for purchase or sale of specific securities.[43]

The SEC's initial guidance in the Adopting Release for Regulation BI[44] is for the most part restated in these FAQs. The determination of whether a recommendation has been made is based on a facts and circumstances analysis of whether a communication constitutes a "call to action." [45] Covered entities and persons will need to weigh the factors and determine if a recommendation exists for themselves with only general guidance using "precedent under the anti-fraud provisions of the federal securities laws as applied to broker-dealers…" as well as SRO guidance.[46] A simple "call me" or a solely educational communication[47] remain the only clear exceptions.

As reiterated in the Form CRS FAQs, whether there is a recommendation also governs the timing of delivery of Form CRS, which must be made before or at the earliest of the recommendation of an account type or strategy, an order for a retail customer or the opening of an account.[48]

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[38] Regulation BI FAQ, *Recommendation*, 4th FAQ.
[39] Form CRS FAQ, *Delivery Requirements*, 3d FAQ.
[40] Regulation BI FAQ, *Recommendation*, 4th FAQ.
[41] Id.
[42] Id.
[43] Id.
[44] *See* EGS Memo, at 3.
[45] Regulation BI FAQ, *Recommendation*, 4th FAQ.
[46] "The SEC declined to provide a "bright line definition" of "recommendation" in Regulation BI. From the authority cited in the SEC's adopting release, the *SEC did intend* to carry forward the "existing framework" for determining if a recommendation has been made, primarily found in FINRA rules and guidance, *e.g.,* FINRA Regulatory Notice 11-02 (2011)(discussing "recommendation" in the suitability context)." EGS Memo, at 3.
[47] Regulation BI FAQ, *Recommendation*, 6th FAQ.
[48] SEC Form CRS FAQ, Delivery Requirements, 3rd FAQ.

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Registered Representative Transitions between Firms

In a separate Regulation BI FAQ, the SEC staff recognizes "it is common industry practice" for registered representatives to leave one firm for another firm and before leaving the first firm contact their clients with the news.[49] The SEC staff applies the same "facts and circumstances" test and guidance summarized in the section above to determine if a recommendation has been made in this context.[50] In broad strokes, the SEC staff suggests that calling existing clients to attempt to persuade the customers to move their accounts will likely be a "call to action" and hence a covered recommendation.[51] In the same FAQ the staff also gives a contrasting example where merely communicating the news and stating the broker would be in touch "in and of itself would not be reasonably viewed as a 'call to action'" absent other factors.[52]

Disclosure Obligations

Delivery of Form CRS

To dispel any remaining doubt, one Regulation BI FAQ flatly states that delivering Form CRS may not alone satisfy all the disclosure obligations under Regulation BI.[53] In "most instances" additional or supplemental disclosure will need to be provided to meet Regulation BI's requirement that all material facts be disclosed in writing at or before the time of a covered recommendation.[54] Another FAQ does recognize that Form CRS will generally be sufficient for certain disclosure *elements* such as the capacity a "standalone broker-dealer" acts in.[55]

Oral and other Supplemental Disclosure

The Regulation BI FAQs reiterate prior guidance in Regulation BI's Adopting Release that the requirement to make full and fair disclosure of all material facts prior to or at the time of a recommendation "in writing" is generally not satisfied by *oral* disclosure except in very limited circumstances.[56]

Such circumstances may include later delivery of a trade confirmation or prospectus under existing regulations or an oral update to give facts not known at the time of a written disclosure. [57] To the extent there is later written disclosure of a permissible oral update, the initial written disclosure must have provided

[49] Regulation BI FAQ, *Recommendation*, 5th FAQ.
[50] Id.
[51] Id.
[52] Id.
[53] Regulation BI FAQ, *Disclosure Obligation,* 2d FAQ.
[54] Id.
[55] Regulation BI FAQ, *Disclosure Obligation,* 5th FAQ.
[56] Regulation BI FAQ, *Disclosure Obligation,* 1st FAQ.
[57] Id.

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for this possibility. In the rare instance of a supplemental oral disclosure, that disclosure must also be confirmed in writing, and the firm must maintain a record that an oral disclosure was made.[58]

Conflict of Interest Obligation

Compensation Practices that Cause Conflicts of Interest

Three Regulation BI FAQs discuss the types of conflicts of interest that must either be eliminated or mitigated and the role disclosures and firm policies and procedures play in accomplishing this.[59]

Sales contests, sales quotas, bonuses and non-cash compensation based on selling specific securities or types of securities within a limited period of time are conflicts that *must* be eliminated.[60] A separate, Regulation BI FAQ states that conflicts also arise from broker "forgivable loans" used for broker recruiting that have performance goals based on asset accumulation, revenue benchmarks or client retention.[61] Such loans also cannot be based on the sales of specific securities or types of securities within a limited period of time.

Firms must identify and manage conflicts using written policies and procedures reasonably designed to eliminate or mitigate them and, at a very minimum, disclose them. In the forgivable loan context the Regulation BI FAQ generally exclude compensation practices based on "total products sold, asset growth or accumulation and customer satisfaction" from this requirement, although the SEC staff expressly declined to deem them "presumptively compliant"; firms still need to identify, verify and manage these conflicts and carefully review the correctness of specific practices permitted.[62]

Methods of Conflict Mitigation

The SEC has generally declined to prescribe or mandate particular mitigation methods. In the area of mitigating conflicts from compensation practices, one Regulation BI FAQ provides examples of possible mitigation methods that are somewhat useful for thinking about these issues generally; the examples include:

- avoiding compensation thresholds that disproportionately increase compensation through incremental increases in sales;
- minimizing compensation incentives for employees to favor one type of account over another; or to favor one type of product over another, proprietary or preferred provider products, or comparable products sold on a principal basis, for example, by establishing differential compensation based on neutral factors;

[58] Id.

[59] Regulation BI FAQ, *Conflict of Interest Obligation,* 1st – 3d FAQs.

[60] Regulation BI FAQ, *Conflict of Interest Obligation,* 1st FAQ.

[61] Regulation BI FAQ, *Conflict of Interest Obligation,* 3d FAQ.

[62] Id.

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- eliminating compensation incentives within comparable product lines by, for example, capping the credit that an associated person may receive across mutual funds or other comparable products across providers;
- implementing supervisory procedures to monitor recommendations that are: near compensation thresholds; near thresholds for firm recognition; involve higher compensating products, proprietary products or transactions in a principal capacity; or, involve the roll over or transfer of assets from one type of account to another (such as recommendations to roll over or transfer assets in an ERISA account to an IRA) or from one product class to another;
- adjusting compensation for associated persons who fail to adequately manage conflicts of interest; and
- limiting the types of retail customer to whom a product, transaction, or strategy may be recommended.[63]

SEC Form CRS FAQ

The second FAQ under the Heading "Relationship Summary Format" should be referred to in full for detail on how to create the required .PDF file with machine readable headings.

Some additional guidance on Form CRS content and distribution requirements from the Form CRS FAQs not touched on above is highlighted below.

Relationship Summary Format

One CRS FAQ underscores the requirement each broker-dealer or investment adviser must prepare and deliver *one* relationship summary of its principal relationships, products and services *per firm*.[64] It confirms that different relationship summaries cannot be prepared and delivered for different *services*. All principal relationships, products and services must be combined in one two page summary for one separate firm or four pages for a dually-registered firm using one combined form (challenging as that may be). [65] Firms with more than one affiliated broker dealer or investment adviser that are not dually-registered may choose to include all of them on one Form CRS.[66] That choice, of course, will largely be dictated by space limitations.

Delivery Requirements

Existing Clients

Form CRS has to be delivered to existing clients by June 30, 2020. The Form can be delivered electronically or in hard copy depending upon the client's choice how the client wishes to receive communications about

[63] Regulation BI FAQ, *Conflict of Interest Obligation,* 2d FAQ.
[64] Form CRS FAQ, *Relationship Summary Format*, 1st FAQ.
[65] Form CRS FAQ, *Affiliate Services*, 1st FAQ.
[66] Form CRS FAQ, *Affiliate Services*, 2d FAQ.

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its account(s) from the firm. Some limited flexibility is given by the Form CRS FAQs on delivery by mail, permitting inclusion of the Form CRS with bulk mailings of required items like account statements, Form ADV and other reports to be sent as of month-end or quarterly June 30, 2020, *so long as Form CRS is the first document in the package.*[67]

Account Changes

Form CRS must be amended and delivered again to existing clients if it becomes *materially* inaccurate. Not all changes are material: one Form CRS FAQ gives as an example of a non-material relationship change as where an already identified adviser replaces a sub-adviser.[68] Adding an additional party like a spouse to an account agreement for an existing account without any other action like a funds rollover or transfer of securities does not require Form CRS delivery to either individual, but conversion of an investment advisory relationship to a brokerage account, or the reverse, will trigger delivery of a new Form CRS.[69]

Still Have Questions?

You can reach out to the EGS attorney(s) with whom you work or please do not hesitate to contact EGS financial regulatory partners, William B. Peterson, bpeterson@egsllp.com, or Joan Adler, jadler@egsllp.com, directly.

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[67] Form CRS FAQ, *Delivery Requirements*, 1st FAQ.
[68] Id.
[69] *Compare* Form CRS FAQ, Additional *Delivery Requirements*, 1st and 2d FAQs.